

***Cascading
Set-Asides***

Achieving small business goals
via multi-tiered competition

What is cascading?

- Multi-tiered, competitive, small business set-aside source selection process
- All types of businesses may submit offers
- Offers considered in hierarchical tiers (e.g., 8(a), HUBZone, small business)
- Offers may cascade to lower tier if inadequate competition at their tier
- Award made at highest tier with adequate competition

Origin of Cascading

- HUD's Real Estate Owned Single Family Management & Marketing contracts:
 - New effort for HUD & industry
 - Qualified small business sources unknown
 - Predecessor small business contractors protested new requirement/solicitation
 - Need for continued small business participation

The Problem

- ⌘ Maximize opportunity to small businesses given -
 - ⌘ New, complex requirement
 - ⌘ Unknown universe of qualified small businesses
- ⌘ Minimize potential for delays & cost of reprocurement due to inadequate traditional set-aside sources

HUD-SBA Solution

- ⌘ Establish reasonable number of geographic service areas for award
- ⌘ Use traditional set-asides where appropriate
- ⌘ Create new cascading set-aside to -
 - ⌘ Attract all types of businesses
 - ⌘ Give preference to small & small disadvantaged businesses
- ⌘ Used effectively twice for M&M

2004 M&M Cascade

- ⌘ SET-ASIDES:
 - ⌘ 1 - 8(a) set-aside
 - ⌘ 3 - Small business set-aside
- ⌘ CASCADES:
 - ⌘ 3 - 3-tier cascades (1st 8(a) > 2nd Small Business > 3rd Unrestricted)
 - ⌘ 14 - 2-tier cascades (1st Small business > 2nd Unrestricted)
- ⌘ FULL & OPEN – 3 Areas

Cascading Success – M&M 2004

- ≈ 87 firms submit 243 proposals
- ≈ 23 major contracts awarded:
 - ≈ 14 small disadvantaged businesses
 - ≈ 6 small businesses
 - ≈ 3 large businesses
- ≈ \$1.6 billion total award value
- ≈ \$1.3 billion awarded to small & small disadvantaged firms

GAO upholds cascading

“A solicitation provision stating that a section 8(a) set-aside will become a small business set-aside if fewer than two acceptable offers from 8(a) firms are received is *not contrary to statute or regulation, or unfair to small businesses.*” (B-281352, B-281353)

GAO support continued...

- ≈ “We are aware of **no statute or regulation that would prohibit this approach** [...]. Since the scheme [...] will have the effect of **increasing the opportunity for small business concerns** under an otherwise unrestricted solicitation, we have **no basis to object to this set-aside scheme** as unduly burdensome for small business concerns.”
- ≈ Upheld also under B-289277, B-289277.2, B-290676 & B-290676.2

GAO offers cascading as a solution...

- ⌘ B-290925, Intermark Inc. Oct. 2002
- “...there is no conflict in applying the two preferences [...]. The solicitation can include a ‘cascading’ set of priorities or preferences whereby competition is limited to small business concerns and [other entities]”

Cascade Today - New Challenges

- ⌘ More competing set-aside programs -
 - ⌘ HUBZone
 - ⌘ Service Disabled Veteran Owned Small Business
- ⌘ Greater complexity in creating cascades
 - ⌘ HUBZone - 8(a) parity
- ⌘ Harder to justify bundling

When to use cascading

- ⌘ New requirements
- ⌘ No precedent of performance by small business
- ⌘ Inconclusive market research (i.e., adequate competition for traditional set-asides not evident)
- ⌘ Above \$3M (if 8(a) included)

When not to!

- ⌘ Market research reveals adequate sources for traditional set -aside(s)
- ⌘ Requirement previously met by small business

Key steps

- ⌘ Conduct market research
CCR Dynamic Search
- ⌘ Assess status of agency small business goals achievement
- ⌘ Design the cascade
- ⌘ Solicit & evaluate offers
- ⌘ Select competitive offer at highest tier possible

Designing a Cascade

- ⌘ Hierarchy must be followed -
 - ⌘ 8(a)/HUBZone (these have parity)
 - ⌘ SDVOSB
 - ⌘ Other small businesses
 - ⌘ Other-than-small businesses
- ⌘ Numerous possible configurations
- ⌘ Not all business types need be included
- ⌘ Other-than-small-business always the lowest tier

Sample Cascade

- 1st tier: 8(a) Concerns*
 - 2nd tier: HUBZone Small Business*
 - 3rd tier: Other Small Businesses
 - 4th tier: Other-Than-Small Businesses
- *CAUTION! These may *not* cascade to next tier *unless* also classified at that tier (e.g., both 8(a) & HUBZone concern). They *may* cascade to small business tier.

Evaluating Offers

- ⌘ Start with highest tier -
 - ⌘ Consider only these offers
 - ⌘ Determine acceptable offers
 - ⌘ If adequate competition make award
- ⌘ If inadequate competition -
 - ⌘ Proceed to next lower tier
 - ⌘ Cascade down acceptable offer *if* possible
- ⌘ Proceed through tiers, as needed

Adequate Competition

- ⌘ 8(a) -
 - ⌘ Competitive offers received from at least 2 qualified, responsible concerns; and
 - ⌘ Award can be made at fair market price
- ⌘ HUBZone, SDVOSB & Small Business -
 - ⌘ Both conditions above; *or*
 - ⌘ One acceptable offer received from responsible concern, *and* Contracting Officer decides to award to it

The fine print...

- ⌘ 8(a) firm may **not** cascade to HUBZone tier unless firm is also HUBZone
- ⌘ 8(a) or HUBZone may **not** cascade to SDVOSB tier unless also an SDVOSB
- ⌘ 8(a), HUBZone & SDVOSB **may** cascade to “Other Small Business” if that tier is reached

Caution!

- ⌘ **Don't** include tiers for business types that have no formal set-aside authority (e.g., women-owned small businesses)
- ⌘ **Don't** use prices from lower-tier offers (e.g., large businesses) to establish price reasonableness of higher-tier offers **unless** the lower tier is reached
- ⌘ **Don't** forget to make proper 8(a) offers & obtain SBA acceptance of 8(a) awards
- ⌘ **Do** use best value tradeoff selection approach

Final Thoughts

- ⌘ Cascading can be complicated
- ⌘ Requiring activities must understand it
- ⌘ Clear direction to offerors is a must
- ⌘ Adherence to solicitation is mandatory
- ⌘ No substitute for poor market research
- ⌘ Use judiciously - abundance of set-aside programs
